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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Amador)

CHARLES DAVID WILLIAMS, JR., et al., Plaintiffs and Appellants, v. L. STORRIE et al., Defendants and Respondents.	C068319 (Super. Ct. No. 10CV6659)

Plaintiffs Charles David Williams, Jr., and Robert S. Fallis sued Mule Creek State Prison, four individual prison employees, a law firm, and one individual attorney for invasion of privacy and unauthorized disclosure of confidential medical records. The trial court sustained without leave to amend defendants' demurrers to plaintiffs' complaint, and ultimately dismissed the complaint.

In this pro se appeal from the judgments entered in defendants' favor, plaintiffs contend the trial court erred in sustaining the demurrers, and also contend the court erred in

failing to enter the defaults of Mule Creek State Prison, L. Storrie, N. Voss, T. Weinholdt, and C.J. Smith (collectively, the prison defendants) after they were served with the summons and complaint but had filed no response within the statutory period.

Upon de novo review of the complaint, we conclude the trial court erred in sustaining defendants' demurrers. We also conclude the trial court erred by not entering the defaults of the prison defendants.[1] We reverse the judgments, strike the orders sustaining defendants' demurrers, and order the trial court to enter the defaults of the prison defendants.

STANDARD OF REVIEW

Because this is an appeal following successful demurrers, we accept as true all facts properly pled in plaintiffs' complaint, and also incorporate any facts of which we may take judicial notice. (*Gu v. BMW of North America, LLC* (2005) 132 Cal.App.4th 195, 200.)

PROCEDURAL BACKGROUND

Allegations of the Complaint

Plaintiffs are prison inmates.

Plaintiff Williams contacted defendant law firm Khorrami Pollard & Abir, LLP (including Galorah Keshavarz, collectively, the attorney defendants), about possibly participating in a

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[1] The individual prison defendants are identified in the record by initial and last name only.

lawsuit brought by the law firm on behalf of inmates who have hepatitis C and have received inadequate medical treatment. Williams requested a questionnaire. The firm responded and sent Williams a questionnaire, attorney/client retainer agreement, and a HIPAA authorization for the release of medical information. Williams discussed the matter with his cellmate, plaintiff Fallis, who also has hepatitis C.

While Williams was reviewing the paperwork he had received, he received a letter from the law firm, signed by defendant Galorah Keshavarz, which stated in pertinent part: "We are currently reviewing your file and have noticed that you do not have an updated CDC 602 requesting treatment for your Hepatitis C in your file. We advise that you file a CDC 602 requesting treatment for your Hepatitis C virus ASAP!! . . . If you have not filed a CDC 602 requesting treatment for your Hepatitis C virus, please do so immediately. . . . As always, please make copies of all CDC 602 that you submit for your own records, and send a copy, including any and all responses, to our office immediately." (Paragraph breaks omitted.)

From this letter, Williams concluded the law firm had already received his prison medical records, without his having consented to their disclosure.

Farris also wrote to the law firm and received in response the same information and forms sent to Williams. Before he consented to the release of his medical records, Farris received a letter from the law firm, stating, "We have reviewed your file

and analyzed your potential case against the California Department of Corrections [and Rehabilitation] regarding treatment of Hepatitis C. Based on our review of the facts surrounding your case, we have concluded that your case does not fit the profile of the type of case our office is currently accepting. As a result, while we appreciate your consideration of our law firm to represent you in this matter, we are unable to take your case."

Both plaintiffs submitted administrative appeals challenging the unauthorized release by prison employees of their medical records to the law firm. Williams's appeal stated he "has become aware that CDCR has released his medical files to a Law F[i]rm without his consent being given," and attached the letter he received from the law firm as proof "CDCR did in fact give out his medical information" to the firm.

Documents related to plaintiffs' administrative appeals indicate their respective medical records show no release of medical files to the law firm.

In a letter to the inmate appeals board regarding Williams's appeal, prison health records technician defendant L. Storrie reported he told Williams there were no records indicating that Williams's medical file had been requested by or sent to anyone from the law firm. Williams responded that the law firm's reference to a "file" "could only mean his medical file, since how could they know his file did not contain the documents they referred to in their letter, unless they had

copies of his medical file." Storrie then called the law firm, and spoke with "Louis, the clerk handling Inmate Williams' file. He confirmed their office did not receive anything from CDCR or Mule Creek, it only has the documents Inmate Williams sent them and the documents they have sent Inmate Williams. The 'file' they are referring to specifically in their . . . correspondence with Inmate Williams is their file they have created for him at their office." When Storrie relayed to Williams his conversation with the law firm clerk, Williams was not satisfied with this explanation. Williams declined to withdraw his administrative appeal because, in his view, the attorneys were "'covering up' for their mistake and that they do have his medical records."

After plaintiffs' claims filed with the Victim Compensation and Government Claims Board were rejected, they filed the instant complaint "for invasion of privacy[,] unauthorized disclosure of confidential medical records" against the attorney defendants and the prison defendants.[2] To demonstrate their exhaustion of administrative remedies, plaintiffs attached as exhibit A to the complaint documents related to their inmate appeals, including the law firm correspondence and Storrie's report of his interviews with Williams.

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[2] J. Clark Kelso, receiver for the prison medical system was also named as a defendant, but he was never served with the complaint, and the complaint was eventually dismissed as to him.

Demurrer by the Attorney Defendants

The attorney defendants demurred to the complaint, on the ground it fails to state facts sufficient to state a cause of action against them.[3] They argued the facts contained in the documents that comprise exhibit A to the complaint plainly demonstrate the attorney defendants never obtained plaintiffs' medical records, and thus "blatantly contradict" and "entirely negate" the allegations upon which plaintiffs' claims are premised. Plaintiffs opposed the demurrer on the grounds the "case must go to discovery, and to a[n] evidentiary hearing."

On August 20, 2010, following a hearing at which plaintiffs did not appear, the trial court sustained the attorney defendants' demurrer without leave to amend, on the ground plaintiffs failed to allege facts giving rise to an invasion of privacy because, although the complaint alleges defendants illegally obtained plaintiffs' medical records, the correspondence referenced in the complaint shows the "file" reviewed by defendants "was a legal file, not a medical file."

The trial court entered judgment in favor of the attorney defendants on October 27, 2010.

Although they had filed no demurrer, and the case had not been dismissed by the trial court as to them, the prison

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[3] The demurrer was filed on behalf of both the law firm and attorney Keshavarz. Plaintiffs' later suggestions that attorney Keshavarz failed to appear, and thus his default may be taken, are mistaken.

defendants then submitted a form request for dismissal of the entire action. The request was denied.

Plaintiffs' Request for Evidentiary Hearing and Motion for Entry of the Defaults of the Prison Defendants

After the court sustained the attorney defendants' demurrer without leave to amend, plaintiffs brought a motion for an evidentiary hearing to "see the files" to which the attorney defendants referred in their correspondence with plaintiffs.

Plaintiffs also moved for entry of the defaults of the prison defendants, pointing out that all (with the exception of J. Clark Kelso, see fn. 2, *ante*) had been served with the summons and complaint on June 23, 2010.

Demurrer by the Prison Defendants

The prison defendants responded to plaintiffs' attempt to take their defaults by filing a demurrer in October 2010, on the grounds plaintiffs' complaint is fatally defective because "[d]efendants never released plaintiffs' medical records," and "the exhibits [to the complaint] plainly evidence the 'file' referenced by [the attorney defendants] was comprised strictly of [d]efendants' internal files for [p]laintiffs and did not include [p]laintiffs' medical records."

Following a hearing at which plaintiffs appeared by telephone, the trial court sustained the demurrer of the prison defendants to the complaint without leave to amend. The trial court then dismissed the complaint with prejudice as to the

prison defendants, and ordered that judgment be entered in their favor.

DISCUSSION

I

Applicable Rules Governing this Appeal

A demurrer may be sustained without leave to amend where the facts are not in dispute and the nature of the plaintiff's claim is clear but, under substantive law, no liability exists. (*Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233.) On appeal from a judgment of dismissal after an order sustaining a demurrer without leave to amend, we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.)

In so doing, we accept as true all material facts properly pled in the complaint. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 193; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We give the complaint a reasonable interpretation and treat the demurrer as admitting all material facts properly pled, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

When, as here, a court sustains a demurrer without leave to amend, our task on review is to "decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could

cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

Lack of legal counsel does not entitle an appellant to special treatment. (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.) A pro se litigant is held to the same restrictive rules of procedure as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

II

The Attorney Defendants' Demurrer

As a threshold matter, we reject the attorney defendants' assertion that plaintiffs' appeal is untimely. The trial court entered judgment in favor of the attorney defendants on October 27, 2010. A proof of service dated October 21, 2010, shows the clerk mailed a copy of the "Judgment of Dismissal following Sustaining of Demurrer without leave to Amend" to all parties. On November 2, 2010, plaintiffs filed a notice of appeal from an "[o]rder from the Amador Superior Court

Dismissing the Case." Based on this timeline, plaintiff's appeal was timely.

The trial court sustained the attorney defendants' demurrer without leave to amend on the ground correspondence contained within an exhibit to the complaint fatally undermined the complaint because it shows "the file reviewed [by the attorney defendants] was a legal file, not a medical file." In so concluding, the trial court apparently accepted the argument that the documents comprising exhibit A to the complaint "blatantly contradict" the allegations that plaintiffs' confidential medical records were disclosed without their consent and establish, to the contrary, that the attorney defendants never obtained plaintiffs' medical records.

This argument rests on the generally-accepted premise that, when reviewing a complaint on demurrer, a court must accept as true both the facts alleged in the text of the complaint and the facts appearing in exhibits attached to it; if the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence. (*Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 245; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567–568.) Thus, for example, when a complaint denies the existence of an easement, but a right-of-way grant deed attached to the complaint establishes its existence, "the allegation cannot withstand the clear proof of the easement's existence provided by the language" of the right-of-way grant. (*Sarale v. Pacific*

Gas & Electric Co., *supra*, 189 Cal.App.4th at pp. 244-245; see also *Gilman v. Dalby* (2009) 176 Cal.App.4th 606, 613 ["the copy of the lien attached to the complaint shows that defendants did not sign the lien and were not parties to the lien contract" and fatally undermines the plaintiff's allegation that defendants signed the lien]; *Mead v. Sanwa Bank California, supra,* 61 Cal.App.4th at pp. 567–568 [allegation in the complaint that defendants are sureties is inconsistent with the attached deed of trust, showing they are instead trustors]; *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1626–1627 [allegation plaintiff individually was a customer of the bank contradicted by exhibit showing that unrelated corporation was the accountholder].)

Having reviewed the complaint de novo (see *McCall v. PacifiCare of Cal., Inc., supra,* 25 Cal.4th at p. 415), we conclude the trial court erred in sustaining the attorney defendants' demurrer on the ground that correspondence attached to the complaint contradicted its allegations. At most, exhibit A to the complaint shows that the attorney defendants deny the allegations that plaintiffs' medical records were shared without authorization. Defendants' denials -- as reflected in defendant Storrie's letter concerning Williams's administrative appeal -- do not conclusively establish that plaintiffs' allegations are incorrect; they create an issue of fact as to whether plaintiffs' medical records were in fact disclosed without authorization. Because the exhibit fails to

eliminate the underlying factual dispute as to whether plaintiffs' privacy was violated, the trial court erred in sustaining the demurrer based on the exhibit. (Cf. *Sarale v. Pacific Gas & Electric Co.*, *supra*, 189 Cal.App.4th at pp. 245-246.)

Having determined that the demurrer was erroneously sustained, we reverse the judgments entered in the attorney defendants' favor. Accordingly, we need not address plaintiffs' contentions on appeal regarding other errors associated with the entry of those judgments after the demurrers were sustained.

III

The Defaults of the Prison Defendants

The proofs of service in the record indicate that the prison defendants were all served by substitute service on June 23, 2010; a copy of the summons and complaint was mailed to each on the same date. Absent a stipulation extending the time for their response, service was deemed complete on July 3, 2010, and the prison defendants had until August 3, 2010, to respond to the complaint. (Code Civ. Proc., §§ 415.20, subd. (b), 430.40, subd. (a); Cal. Rules of Court, rule 3.110(d).)

It is undisputed that the prison defendants filed their demurrer on October 12, 2010, beyond the time allowed by law to respond to the complaint. Yet, on October 25, 2010, the hearing on plaintiffs' "motion" for the entry of the prison defendants' default filed on September 21, 2010, was continued. And then on October 27, 2010, the motion for entry of default was declared

by the trial court to be "moot" and dropped from the calendar *before* the scheduled hearing on the prison defendants' demurrer.

This was error. If a defendant's responsive pleading is not served within the specified time, and no extension of time has been granted, he or she is "in default" and the court clerk "shall enter the default of the defendant" upon the plaintiff's request. (Code Civ. Proc., § 585, subd. (b).) A court clerk has no discretion to refuse a proper request for entry of default. (*W. A. Rose Co. v. Municipal Court* (1959) 176 Cal.App.2d 67, 71.) In fact, a plaintiff "must" timely file a request for default, or the court may issue an order to show cause why sanctions should not be imposed for failing to do so. (Cal. Rules of Court, rule 3.110(g).) Although the plaintiffs here failed to timely file their requests for entry of default against the prison defendants, they did so without any order from the trial court.

Here, because all of the statutory requirements were met prior to plaintiffs' requests to enter the defaults of the prison defendants, the trial court erred in refusing to enter the requested defaults. We strike the trial court's order sustaining the belated demurrer of the prison defendants, and direct the court clerk to enter these defendants' defaults.[4]

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[4] The prison defendants may, of course, seek relief from those defaults. (Code Civ. Proc., § 473.)

IV

Remaining Contentions

We briefly address the remaining contentions raised by the plaintiffs in their appellate briefs.

Plaintiffs argue their request for an evidentiary hearing was granted, but never scheduled. They are mistaken. Our review of the record reveals their motion was declared "moot" and dropped from the calendar. Moreover, we note that plaintiffs' request for an evidentiary hearing consisted of a request "to see the files" in the attorney defendants' possession. A request to see documents in another party's possession is generally addressed by making proper discovery requests after the defendants have answered the complaint. (See Code of Civ. Proc., § 1985, et seq.)

Plaintiffs also contend they were occasionally denied meaningful access to the court by prison personnel. Various remedies are available to secure access to the court by a prisoner who is a party to a bona fide civil action (see *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792-793). The trial court, however, has discretion to choose among those remedies, and the exercise of that discretion will not be overturned on appeal unless it appears there has been a miscarriage of justice. (*Id.* at pp. 793-794.) Plaintiffs have not attempted to show how the claimed denials of access caused a miscarriage of justice.

DISPOSITION

The judgments in favor of defendants Khorrami Pollard & Abir, LLP, Galorah Keshavarz, Mule Creek State Prison, L. Storrie, N. Voss, T. Weinholdt, and C.J. Smith are reversed. The orders sustaining their demurrers are stricken, and the trial court shall enter the defaults of defendants Mule Creek State Prison, L. Storrie, N. Voss, T. Weinholdt, and C.J. Smith. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3), (5).)

HOCH, J.

We concur:

BLEASE, Acting P. J.

DUARTE, J.